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OFFICE OF PETITIONS

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#19

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:)
Richard Craig et al.) Before the Examiner
Application No. 09/771,064) Rick Papabrica
Filed: January 26, 2001)
METHOD AND APPARATUS FOR) Group Art Unit
THE DETECTION OF HYDROGENOUS) 3641
MATERIALS) November 17, 2004

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450 on	
November 17, 2004	(Date of Deposit)
John M. Bradshaw	
Name of Registered Representative	
November 17, 2004	Signature
Date of Signature	

PETITION FOR REVIVAL OF APPLICATION ABANDONED UNAVOIDABLY
UNDER 37 CFR 1.137(a)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 223130-1450

Sir:

The Applicant hereby requests that the Notice of Abandonment issued in the above-referenced application be withdrawn on the basis that the Office Action purportedly mailed on December 1, 2003 was never received. The \$55 small entity petition fee is provided in the attached credit card authorization form. The Office is hereby authorized to credit any overpayments or charge any fee deficiencies to deposit account number 23-3030.

4

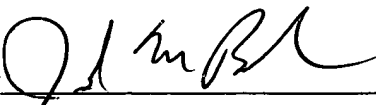
REMARKS

A Notice of Abandonment was mailed on October 8, 2004. It states as its basis that no reply had been received for an Office Action dated December 1, 2003. However, no such December 1, 2003 Office Action ever arrived at the office of the undersigned attorney of record. Rather, the last substantive Office Action that was received bore a date of July 18, 2003, and Applicant timely responded by filing a Request for Continued Examination on December 1, 2003. Since then, no further communications relating to the merits of the case have been received.

The undersigned first learned about the December 1, 2003 Office Action from the Notice of Abandonment dated October 8, 2004. A Declaration of Kristi A. Brand is submitted herewith detailing office procedures and the lack of receipt of the subject office action. Accordingly, it is respectfully suggested that the entire delay in filing the present petition for revival was unavoidable.

For these reasons, the Applicant respectfully requests withdrawal of the Notice of Abandonment and that a new Office Action be issued. The Examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the present application.

Respectfully submitted,

By 

John M. Bradshaw, Reg. No. 46,573
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DECLARATION OF KRISTIE A. BRAND

I, Kristie A. Brand, hereby declare and affirm as follows:

1. I am a full-time docketing clerk for the law firm of Woodard, Emhardt, Moriarty, McNett & Henry, LLP in Indianapolis, Indiana (hereafter "Woodard Emhardt" or "law firm"). Woodard Emhardt maintains two full-time docketing clerks, and I have held this position since prior to June 10, 2003, the date that the correspondence address for U.S. Patent Application No. 09/771,064 was changed to said law firm. I submit this declaration in support of a Petition for Revival submitted herewith. I am familiar with the docketing procedures of said law firm, and in particular such systems and procedures as they pertain to the docketing of all correspondence received from the United States Patent and Trademark Office for the above-identified patent application.

2. Such docketing procedures include the following. As docketing clerks, we review all documents received in our office each day and docket those which require a response. Since prior to June 10, 2003, Woodard, Emhardt has maintained an ELITE™ computerized docketing database system. Based upon training and United States Patent and Trademark Office rules, we determine the future due dates for each document and enter these due dates into the ELITE™ docket database system.

3. Our docketing system for all correspondence received from the U.S. Patent and Trademark Office is as follows: When the correspondence arrives, we docket the response deadline and certain reminders prior to the deadline. Updated docket reports for each attorney are generated weekly and distributed to each attorney and his or her secretary, showing all docketed entries for the following thirty (30) days. When a docket deadline or a reminder is on the current day's docket, one of the docketing clerks calls the appropriate individuals, namely the

attorney and/or the attorney's secretary, to ensure the deadline has been met. On days which both docket clerks are absent, our firm has back-up personnel to fulfill our duties.

4. I was trained for the position of docketing clerk by the previous docketing clerk, who had over fifteen (15) years of experience. I worked under the previous docketing clerk's close supervision for approximately one year prior to being permitted to independently perform the docketing duties.

5. I was personally involved in the docketing of due dates for U.S. Patent Application No. 09/771,064.

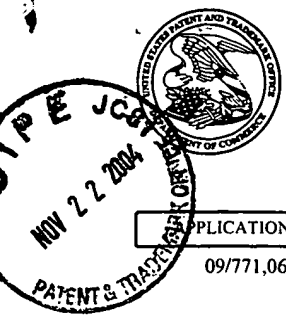
6. I do not recall receiving any Office Action in the above case dated on or around December 10, 2003. I have searched our records and talked to others employees and the attorneys involved with this case at Woodard Emhardt with regard to this and related cases and I can find no evidence that Woodard Emhardt ever received such an Office Action in this case or that anyone was aware that a response to the same was due. Upon information and belief, Woodard Emhardt never received the December 10, 2003 Office Action.

7. During my tenure as docketing clerk with this firm, I estimate that I have docketed tens of thousands of docket dates. To my knowledge, no deadlines from Office Actions have been missed as a result of docketing errors.

8. I further declare that all statements made herein of my own knowledge are true, and that all statements made on information are believed to be true; and further, that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both.

11.17.2004
DATE

Kristie A. Brand
Kristie A. Brand



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UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,064	01/26/2001	Richard A. Craig	E-1825 CIP	2684

7590 10/08/2004

WOODARD EMHARDT MORIARTY MCNETT & HENRY LLP
ATTN: JOHN M. BRADSHAW
111 MONUMENT CIRCLE, SUITE 3700
INDIANAPOLIS, IN 46204

EXAMINER

PALABRICA, RICARDO J

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 10/08/2004

RECEIVED
OCT 12 2004

Woodard, Emhardt, Moriarty,
McNett & Henry LLP

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment

Application No.

09/771,064

Examiner

Rick Palabrica

Applicant(s)

CRAIG ET AL.

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 01 December 2003.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.